

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|---|-------------------------------------|---|---|--|
| Investigator: Dane Buchanan | Team: Team # 2 | CCRB Case #: 201105243 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 04/23/2011 2:10 AM | Location of Incident: Linwood Street and Atlantic Avenue | Precinct: 75 | 18 Mo. SOL 10/23/2012 | EO SOL 10/23/2012 | |
| Date/Time CV Reported Mon, 04/25/2011 2:25 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Mon, 04/25/2011 2:25 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------|--------|--------|---------|
| 1. POM Frank Vera | 12899 | 935929 | 075 PCT |
| 2. SGT Sean Downes | 03978 | 918975 | 075 PCT |
| 3. Officers | | | |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------|--|-----------------------------|
| A.POM Frank Vera | Discourtesy: PO Frank Vera spoke obscenely to § 87(2)(b) | |
| B.POM Frank Vera | Force: PO Frank Vera hit § 87(2)(b) against a fence. | |
| C.POM Frank Vera | Force: PO Frank Vera used physical force against § 87(2)(b) | |
| D.SGT Sean Downes | Force: Sergeant Sean Downes used physical force against § 87(2)(b) | |
| E. Officers | Force: Officers used physical force against § 87(2)(b) | |

Case Summary

§ 87(2)(b) and § 87(2)(b) filed the following complaint with the CCRB via the online website on April 25, 2011 (encl. 4A – 4C). § 87(2)(b) did not witness the incident.

On April 23, 2011 at approximately 2:10 a.m., § 87(2)(b) was arrested for § 87(2)(b) by PO Frank Vera of the 75th Precinct at the intersection of Atlantic Avenue and Linwood Street in Brooklyn. The following allegations resulted:

- **Allegation A – Discourtesy: PO Frank Vera spoke obscenely to** § 87(2)(b)
- **Allegation B – Force: PO Frank Vera hit** § 87(2)(b) **against a fence.** It was § 87(2)(g)
- **Allegation C – Force: PO Frank Vera used physical force against** § 87(2)(b)
- **Allegation D – Force: Sergeant Sean Downes used physical force against** § 87(2)(b) § 87(2)(g)
- **Allegation E – Force: Officers used physical force against** § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

§ 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a written statement when he filed his complaint on April 25, 2011. On April 27, 2011, § 87(2)(b) provided a telephone statement to the CCRB. He was interviewed at the CCRB on April 28, 2011 (encl. 5A – 5D). His statements were consistent except where noted below.

On April 23, 2011 at approximately 2:10 a.m., § 87(2)(b) and § 87(2)(b) Unknown were walking on Atlantic Avenue in the vicinity of Linwood Street in Brooklyn on their way home from a party with § 87(2)(b) and § 87(2)(b) Unknown, who were a little ahead of them. A marked RMP parked behind § 87(2)(b) and an officer, identified by § 87(2)(b) as PO Frank Vera of the 75th Precinct, told him, “Turn the fuck around.” § 87(2)(b) put his hands on a nearby fence and PO Vera banged § 87(2)(b)'s face against it. In his written statement, § 87(2)(b) indicated that his face was banged against the gate several times. PO Vera then handcuffed § 87(2)(b) with the help of his partner, identified through investigation as Sergeant Sean Downes of the 75th Precinct. § 87(2)(b) did not resist being handcuffed.

After § 87(2)(b) was handcuffed he was thrown forcefully to the ground. § 87(2)(b) had difficulty explaining how he was thrown to the ground and was inconsistent on whether PO Vera was assisted by Sergeant Downes in throwing him to the ground. While § 87(2)(b) was on

the ground PO Vera and Sergeant Downes punched, elbowed and kicked him in the face, ribs and arms. Sergeant Downes also attempted to break § 87(2)(b)'s arm by leaning on it and pushing it. The officers told § 87(2)(b) to stop resisting even though he was not resisting. After being beaten by the officers for approximately three minutes, § 87(2)(b) was picked up and pushed into the RMP. § 87(2)(b) indicated in his written statement that the officers also dragged his face against the ground before picking him up. Sergeant Downes then walked away while PO Vera stayed with § 87(2)(b). § 87(2)(b) did not see anything happening outside of the vehicle and did not know if anyone else was arrested or if any other officers arrived to the scene. After about 20 minutes § 87(2)(b) was taken to the 75th Precinct stationhouse where he saw § 87(2)(b) Unknown and § 87(2)(b) who had also been arrested. § 87(2)(b) did not request medical attention at the precinct and he never sought treatment for his injuries. § 87(2)(b) sustained a swollen left eye and abrasions to his left cheek, left temple and under his chin along with bruising to his left shoulder and left arm.

Victim: § 87(2)(b)

§ 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a brief telephone statement on July 26, 2011. On April 23, 2011 at approximately 2:10 a.m., § 87(2)(b) and a large group of his friends were walking home from a party on Atlantic Avenue in Brooklyn when officers pulled up and pushed his friend § 87(2)(b) Unknown against a fence. § 87(2)(b) and unnamed friends ran and the officers caught up with them and hit them and arrested them. § 87(2)(b) was arrested for reckless endangerment.

On July 26, 2011, § 87(2)(b) scheduled an interview for July 28, 2011. § 87(2)(b) did not appear for this interview and did not call previously to cancel or reschedule. Messages were left for § 87(2)(b) on August 1, 2011 and August 15, 2011. A missed appointment letter was sent to § 87(2)(b) on July 28, 2011. This letter has not been returned by the United States Postal Service. To date, § 87(2)(b) has not responded to these attempts to contact him to reschedule his interview.

Witness: § 87(2)(b)

He is a § 87(2)(b)

CCRB Testimony

§ 87(2)(b) called the CCRB on May 2, 2011 after receiving a letter and provided a brief telephone statement. On April 23, 2011 at approximately 2:00 a.m., § 87(2)(b) and a group of friends were walking in the vicinity of Atlantic Avenue and Linwood Street in Brooklyn on their way home from a party. § 87(2)(b) walked away from the group with an unknown female and when he came back to the group he saw § 87(2)(b) on the floor with two officers on top of him hitting him with nightsticks. § 87(2)(b) asked what was going on and one of the officers left § 87(2)(b) and told § 87(2)(b) to come to him. § 87(2)(b) walked away with the rest of his friends and then more police vehicles arrived and some of his friends ran. An unknown officer stopped him and checked him before telling him that he was okay to leave. Another officer told § 87(2)(b) to come to him so that he could give him one of the arrested individual's property.

Once § 87(2)(b) got close the officer grabbed him and arrested him. § 87(2)(b)

On May 2, 2011, § 87(2)(b) scheduled an interview for May 4, 2011. § 87(2)(b) failed to appear for this interview and did not call previously to cancel or reschedule. A missed appointment letter was sent to him on May 4, 2011. This letter has not been returned by the United States Postal Service. A check of the Department of Correction website indicated that he is not currently incarcerated. A Lexis-Nexis search for § 87(2)(b) did not provide any phone numbers for him. To date, § 87(2)(b) has not responded to the CCRB's attempts to reschedule his missed interview.

Attempts to Contact Civilians

Because the full names of § 87(2)(b) Unknown, § 87(2)(b) Unknown and § 87(2)(b) Unknown remain unknown, attempts to contact them could not be made.

§ 87(2)(b)'s address was obtained from the 75th Precinct command log and a subsequent search of the Cole's Directory provided an apartment number for him. Letters were sent to him on April 29, 2011 and May 2, 2011. These letters have not been returned by the United States Postal Service. On May 2, 2011, § 87(2)(b)'s mother § 87(2)(b) called the undersigned investigator and indicated that she would have her son call to schedule an interview. When § 87(2)(b) did not call, § 87(2)(b) was contacted on May 5, 2011 and she indicated that she did not want her son to be a part of the complaint but that if she changed her mind she would have him call. To date, § 87(2)(b) has not called the CCRB to provide testimony regarding the incident.

Letters were sent to the address listed on the 75th Precinct command log for § 87(2)(b) on July 7, 2011 and July 12, 2011. These letters have not been returned by the United States Postal Service. Five calls were made to the number listed on the command log between July 11, 2011 and July 22, 2011. A Lexis-Nexis search for additional contact information returned negative results. To date, § 87(2)(b) has not responded to these attempts to contact him.

Letters were sent to the address listed on the 75th Precinct command log for § 87(2)(b) on July 7, 2011 and July 12, 2011. The letter sent on July 7, 2011 was returned by the United States Postal Service on August 31, 2011. Three calls were made to the number listed on the command log for § 87(2)(b) between July 11, 2011 and July 18, 2011. On July 18, 2011, a man answered and indicated that it was the wrong number for § 87(2)(b). A Lexis-Nexis search returned negative results. To date, the CCRB has been unable to obtain the correct contact information for § 87(2)(b).

Letters were sent to the address listed on the 75th Precinct command log for § 87(2)(b) on July 7, 2011 and July 12, 2011. Both letters were returned by the United States Postal Service. The command log failed to provide a phone number for § 87(2)(b). A Lexis-Nexis search failed to provide any contact information for him. To date, the CCRB has not been able to obtain the correct contact information for § 87(2)(b).

NYPD Statement(s):

Subject Officer: PO FRANK VERA

- *He is a white male who was § 87(2)(b)*
- *He is assigned to the 75th Precinct. He worked, in uniform, from 11:15 p.m. on April 22, 2011 until 7:15 a.m. on April 23, 2011. He was assigned as the sergeant's operator and worked with Sergeant Sean Downes in a marked RMP.*

Memo Book

At 2:00 a.m. he had a pick-up of a disorderly group at Atlantic Avenue and Linwood Street. At 2:23 a.m. he had six arrests (encl. 6A – 6B).

Complaint Reports and Arrest Reports

The complaint report and arrest report for § 87(2)(b) (encl. 6C – 6G) indicated that he acted in a violent and threatening manner and yelled, "Fuck the police," causing public alarm. § 87(2)(b) also flailed his arms and legs and refused to be handcuffed. Force was used to restrain and control § 87(2)(b) and he was § 87(2)(b).

The complaint report for § 87(2)(b) and § 87(2)(b) (encl. 6H – 6I) indicated that they interfered with the arrest of another individual while simultaneously encouraging others to do the same by acting in a violent and tumultuous manner. Additionally, these individuals resisted arrest by flailing their arms and legs. § 87(2)(b)

Force was used against § 87(2)(b) and § 87(2)(b) to restrain and control them.

CCRB Testimony

PO Frank Vera was interviewed at the CCRB on September 1, 2011 (encl. 6P – 6Q). On April 23, 2011 at approximately 2:10 a.m., PO Vera and Sergeant Downes observed a large crowd of about 50 – 60 people walking westbound on Atlantic Avenue from Linwood Street in Brooklyn. The crowd was split on either side of the street and as they walked they yelled and cursed at each other. Half of the group began walking south on Linwood Street and they began yelling and cursing amongst each other and a couple of people were pushing. PO Vera and Sergeant Downes suspected that a fight was about to break out and drove closer to watch the group. Once they were near the group, § 87(2)(b) yelled and cursed at the officers, saying, "Fuck the police."

Once § 87(2)(b) cursed at the officers PO Vera exited the RMP with the intention of giving § 87(2)(b) a § 87(2)(b). PO Vera asked for his ID but § 87(2)(b) refused. Upon his refusal, PO Vera decided to arrest § 87(2)(b) to bring him to the precinct where he could verify his identity and issue him a summons. § 87(2)(b) refused to place his hands behind his back and resisted arrest by flailing his arms. PO Vera wrestled § 87(2)(b) to the ground where he was handcuffed. PO Vera believed Sergeant Downes assisted with handcuffing § 87(2)(b) but he was not sure. PO Vera helped § 87(2)(b) up, who was compliant once in handcuffs, and walked him to the RMP. PO Vera never told § 87(2)(b) to turn the “fuck” around, never used any profanity against him and never hit his head against a gate. Neither PO Vera nor Sergeant Downes ever punched, kicked or elbowed § 87(2)(b).

As PO Vera walked § 87(2)(b) towards the RMP, the crowd noticed that § 87(2)(b) had been arrested and walked towards the officers while cursing and throwing any objects that they could find. A garbage bag hit Sergeant Downes in the chest and PO Vera observed another individual, § 87(2)(b) throw a brick at the officers that landed about three feet from Sergeant Downes and about 5 – 8 feet from PO Vera and § 87(2)(b). The officers called for back-up and once they arrived the crowd ran south on Linwood Street. Sergeant Downes took their RMP to assist the back-up officers in dealing with the crowd while PO Vera stood alone with § 87(2)(b) for about 10 - 15 minutes. PO Vera never noticed any injuries on § 87(2)(b).

Subject Officer: SERGEANT SEAN DOWNES

- *He is a white male who was § 87(2)(b).*
- *He is assigned to the 75th Precinct. He worked, in uniform, from 11:05 p.m. on April 22, 2011 until 8:02 a.m. on April 23, 2011. He was assigned as the patrol sergeant and worked with PO Frank Vera in a marked RMP.*

Memo Book

At 2:23 a.m. PO Vera had six arrested at the intersection of Essex Street and Liberty Avenue (encl. 7A – 7B).

CCRB Testimony

Sergeant Sean Downes was interviewed at the CCRB on September 16, 2011 (encl. 7C – 7D). On April 23, 2011 at approximately 2:10 a.m., Sergeant Downes and PO Vera observed a large group of about 50 young men walking westbound on Atlantic Avenue. The group was on both sides of the street and in lanes of traffic and yelled and cursed at each other. They were throwing bottles, knocking garbage cans over and throwing the garbage, banging on gates and knocking on doors. Sergeant Downes and PO Vera drove their RMP towards the group, causing the group to break up into smaller groups, one of which went southbound on Linwood Street. PO Vera drove the RMP towards that group because it was the group closest to them.

An individual in that group, § 87(2)(b) was identified as the most aggressive and loudest male in the group and seemed to be a main part of the problem. As the officers approached the group § 87(2)(b) cursed at the officers, yelling, “Fuck the police.” The officers’ first attention was towards § 87(2)(b) and PO Vera exited the vehicle and approached him. Sergeant Downes did not know if PO Vera said anything to § 87(2)(b) at this point. PO Vera tried to grab § 87(2)(b) but he slapped PO Vera’s hands away from him. PO Vera continued to try to arrest § 87(2)(b) and pushed him towards the gate. § 87(2)(b) continued to resist and flailed his arms and kicked at PO Vera and Sergeant Downes, who assisted PO Vera. They were

eventually able to wrestle him to the ground where he was handcuffed after a short struggle. PO Vera never cursed at § 87(2)(b) and the officers never punched, kicked or elbowed him. PO Vera never pushed his head into a gate and Sergeant Downes never attempted to break his arm.

As PO Vera and Sergeant Downes arrested § 87(2)(b) the rest of the crowd was 20 – 30 feet away and cursed and threw any garbage or glass bottles they could find at the officers. Several males attempted to enter the officers' RMP and one male from the group threw a brick at the officers that landed about 3 – 5 feet away from them. The officers called for back-up and when they arrived the group fled down Linwood Street towards Liberty Avenue. Sergeant Downes jumped into a vehicle to assist in subduing the rest of the group while PO Vera stayed alone with § 87(2)(b). Sergeant Downes did not notice any injuries on § 87(2)(b) and § 87(2)(b) never complained of any to him. The rest of the group was stopped near Liberty Avenue and Essex Street and five to seven people were arrested at that location.

NYPD Document(s)

SPRINT S01526

At 2:00 a.m., a male officer, identified through investigation as Sergeant Sean Downes, indicated that he needed a couple of cars at Linwood Street and Atlantic Avenue, from Atlantic Avenue to Liberty Avenue. Units identifying themselves as 75th Precinct sector B, 75th Precinct sector H, 75th Precinct sergeant 1 and 75th Precinct sector E indicated that they would respond. Sergeant Downes then indicated that the group was walking southbound on Linwood Street and that they would be at Liberty Avenue in about a minute. A unit identifying himself as 75th precinct special operations also indicated that he would respond. At 2:20 a.m., Sergeant Downes indicated that his operator, identified through investigation as PO Frank Vera, had five under from Liberty Avenue and Essex Street (encl. 8A – 8B).

§ 87(2)(b)

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) filed a Notice of Claim with the City of New York on July 18, 2011, claiming injuries to diverse portions of § 87(2)(b)'s body, mental and emotional injuries, unlawful imprisonment, malicious prosecution and violation of civil rights and are seeking one million dollars as redress (encl. 11A – 11C).

§ 87(2)(c), § 87(2)(b)

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 2A – 2B).

Subject Officer(s) CCRB History

- PO Vera has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. 1C).

- Sergeant Downes has been a member of the service for 14 years and there are four substantiated CCRB allegations against him (encl. 1D – 1E).
 - In case 200600024, the Board substantiated allegations of question and/or stop, premises entered and/or searched, frisk and search of person. The NYPD found Sergeant Downes guilty of the frisk but not guilty of the other allegations and he was penalized five vacation days.

Conclusion

Identification of Subject Officer(s)

- PO Vera acknowledged interacting with § 87(2)(b)
- Sergeant Downes acknowledged interacting with § 87(2)(b)
- Because § 87(2)(b) did not provide a formal statement, the subjects of his allegation of force could not be identified and is pled against, “Officers.”

Investigative Findings and Recommendations

Allegations Not Pled

A stop of § 87(2)(b) and § 87(2)(b) is not being pled because it amounts to an arrest dispute.

Although § 87(2)(b) alleged that he saw § 87(2)(b) being hit with nightsticks, because § 87(2)(b) did not make this allegation it is not being pled.

Allegation A – Discourtesy: PO Frank Vera spoke obscenely to § 87(2)(b)

§ 87(2)(b) alleged that PO Vera told him to turn the “fuck” around. PO Vera and Sergeant Downes denied that PO Vera used any discourteous language. Additionally, none of the other civilians alleged hearing any discourteous language. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation B – Force: PO Frank Vera hit § 87(2)(b) against a fence.

§ 87(2)(b) alleged that during his arrest, PO Vera purposefully smashed his face against a fence. PO Vera and Sergeant Downes denied that this occurred. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation C – Force: PO Frank Vera used physical force against § 87(2)(b)

Allegation D – Force: Sergeant Sean Downes used physical force against § 87(2)(b)

§ 87(2)(b) alleged PO Vera and Sergeant Downes punched, elbowed and kicked him all over his body and that Sergeant Downes attempted to break his arm. Although § 87(2)(b) indicated that force was used against § 87(2)(b) he indicated that nightsticks were used against him and was inconsistent with § 87(2)(b)'s account. PO Vera and Sergeant Downes admitted to

_____.

§ 87(2)(b) alleged that unknown officers hit him when he was being arrested. Because § 87(2)(b) failed to reschedule his missed interview, § 87(2)(g) § 87(2)(g)

Reviewer: _____

| Title/Signature | Print | Date |
|-----------------|-------|------|
|-----------------|-------|------|